

Katten

KattenMuchinRosenman LLP

50 Rockefeller Plaza
New York, NY 10020-1605
+1.212.940.8800 tel
katten.com

CHRISTOPHER T. COOK
christopher.cook@katten.com
+1.212.940.6488 direct
+1.212.940.8776 fax

September 18, 2024

VIA ECF

Magistrate Judge Peggy Kuo
United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, NY 11201

**Re: *State Farm Mut. v. Metro Pain*, 1:21-cv-05523 – Motion to Compel Compliance
with Subpoena *Duces Tecum***

Dear Judge Kuo:

Plaintiffs State Farm Mutual Automobile Insurance Company and State Farm Fire and Casualty Company (together, “Plaintiffs”) respectfully move this Court for an order compelling non-party Michael Torres (“Torres”) to serve written responses and produce all documents responsive to Plaintiffs’ subpoena *duces tecum* by a date certain. Torres is expected to have relevant documents, has not objected or otherwise responded to the subpoena, and should be ordered to fully comply.

This motion arises out of Plaintiffs’ subpoena *duces tecum* personally served on Torres on July 16, 2024, responses to which were due by July 30, 2024. *See* Ex. 1 (Subpoena and Affidavit of Service). After Torres failed to initially respond, Plaintiffs sent a follow up letter on August 12, requesting compliance by a new deadline of August 22. *See* Ex. 2. Plaintiffs have received no response from Torres.

Torres is likely to possess documents responsive to the subpoena. In relevant part, the Second Amended Complaint alleges defendants conspired to submit fraudulent bills to insurance carriers for healthcare services provided to automobile accident victims. Patients covered under no-fault auto policies were a necessary component of the scheme, and defendants illegally obtained patients from numerous sources, including defendant Beshert Corp. Beshert purported to be an “advertising” and “marketing” company, but it functioned as a referral network among no-fault providers and attorneys. Torres worked as a marketer for Beshert, as well as defendant Citimed Management Services Inc. Among the documents Plaintiffs seek from Torres are emails relating to his work with these defendants, including emails sent through an account associated with Beshert, torres.beshert@gmail.com. Beshert’s owner, defendant Reuven Alon, has certified he does not have access to this account. However, documents obtained from Google in this action confirm the account is active and contains communications with defendants and other unnamed co-conspirators.

Rule 45 authorizes subpoenas to be issued to non-parties directing them to produce designated documents in that person's possession, custody, or control. *See* Fed. R. Civ. P. 45(a)(1)(A)(iii). The scope of non-party subpoenas under Rule 45 is as broad as that permitted under the discovery rules and reaches all documents in the possession, custody, or control of the subpoena recipient. *See* Fed. R. Civ. P. 45 (advisory committee's notes to 1970 amendment). To preserve the right to object to a subpoena, a non-party must serve written objections within 14 days after service of the subpoena. *Cruz v. Green Tree Mortg. Serv., LLC*, 2017 WL 658054, at *1 (D. Conn. Feb. 17, 2017) ("The failure to serve written objections to a subpoena within the time frame specified by Rule 45[] typically constitutes a waiver of such objections.").

Torres is likely to possess relevant documents responsive to the subpoena, and he has neither responded nor lodged any objections to it. Given the subpoena was properly served, is reasonable, and Torres has not asserted any objections, he should be ordered to serve complete written responses and produce all documents responsive to the subpoena. *See State Farm Mut. Auto. Ins. Co. v. Tabakman*, 2008 WL 4527731, at *3 (E.D.N.Y. Oct. 8, 2008) (granting motion to compel compliance with properly served subpoena seeking relevant information).

Accordingly, Plaintiffs respectfully request the Court issue an order directing Torres to serve written responses and produce all documents responsive to the subpoena by a date certain.

Respectfully submitted,

/s/ Christopher T. Cook

Christopher T. Cook

Encl. Exhibit 1
Exhibit 2

cc: Michael Torres (via FedEx Overnight)